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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,401	02/10/2004	Thomas Edward Pitonyak	076153.0103	1578

31625 7590 04/01/2005

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/775,401

**Applicant(s)**

PITONYAK ET AL.

**Examiner**

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-37 and 43-47 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-16, 22 and 38-42 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 17-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gauge wheel assemblies moveably attached to the center frame member must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 3, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Meek et al (US 4,923,017).**

Regarding claim 1, Meek discloses an agricultural implement comprising:

- a substantially rectangular center frame member, seen as (18), having a front edge, rear edge, and two side edges,
- at least one substantially rectangular wing member, seen as (21), each having a front edge, rear edge, and two side edges,
- a plurality of center frame member hinge plates, seen as (40) and (41), mounted on the first of the side edges of the center frame member as seen in Fig. 2, and where one plate is proximate the front edge and one of the plates proximate the rear edge (see Fig 2),
- a plurality of wing member hinge plates, seen as (42) and (43), mounted on one of the side edges of each wing member, wherein at least one plate is proximate the front edge and one plate is proximate the rear edge (see Fig. 2), and wherein the center frame member hinge plates are configured to be pivotally connected to the plurality of wing member hinge plates so as to permit any of the wing members to be connected to the first of the

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side edges of the center frame member, and further wherein, once connected, the wing member is capable of being rotated between a first extended-working position substantially parallel to and outboard of the first of the side edges of the center frame member and second folded-transport or storage position substantially above and perpendicular to the first of the side edges of the center frame member (see Figs. 1-3),

- at least one hitch connector mounted to the implement and configured for connecting the implement to a towing device, as disclosed in Col 3, lines 24-32, and
- a hinge pin, seen as (26) in Fig. 2, wherein each of the center hinge plates and wing hinge plates are configured to receive the pin, and wherein the pin traverses substantially the distance of the first of the side edges of the center frame and connects each of the plurality of center hinge plates and each of the wing hinge plates mounted to the first of the side edges of the center frame member and to one of the side edges of the connected wing member, respectively (see Figs. 5 and 6).

Regarding claims 3 and 11, the hinge plates of Meek are configured so as to permit the wing member in the folded position to be substantially inboard of the first of the side edges of the center frame member.

Regarding claim 10, Fig. 1 of Meek illustrates the claimed recitation.

Regarding claim 12, Meek discloses hinge pin (26), wherein each of the center frame hinge plates and wing hinge plates are configured to receive the pin (26), and wherein the pin traverses substantially the distance of the second of the

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side edges of the center frame member and connects each of the plurality of center frame member hinge plates and wing member hinge plates mounted to the second side edges of the center frame member and to one of the side edges of the connected wing member, respectively, as shown in Figs. 1 and 2.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek et al (US 4,923,017).**

Regarding claim 2, Meek fails to disclose at least one of the hitch connectors located no more than 86.4 cm from the implement's center of mass. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the hitch connector of Meek to be no more than 86.4 cm from the center of mass, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 5, Meek fails to disclose the pin (26) being steel and having a diameter of at least 5.1 cm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pin of

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Meek to be made of steel and with a diameter of at least 5.1 cm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

**6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek et al (US 4,923,017) as applied to claim 1 above, and further in view of Boetto et al (US 4,030,551).** Meek fails to disclose at least one gauge wheel assembly, each assembly having a wheel and adjustable linkage, at least one assembly moveably attached to a wing member connected to the first of the side edges of the center frame, wherein the wheels are in contact with the field in the working position, and Meek fails to disclose at least one of the assemblies movably attached to the center frame member. Boetto teaches a folding agricultural implement utilizing gauge wheel assemblies (140, 160) on each of the wings, and gauge wheel assemblies (200, 200) movable attached to the center frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implement of Meek to include at least one gauge wheel assembly movably attached to the wing member and an assembly moveable attached to the center frame member as taught by Boetto, since Boetto states in column 9, lines 20-40 that the wheels moveably attached to the center frame serve as conventional assist wheels, and states in column 4, lines 62-65 that the gauge wheels on the wings help to support the wings.

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**7. Claims 13-16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek et al (US 4,923,017) as applied to claim 1 above, and further in view of Moser et al (US 6,675,907).**

Regarding claim 13, Meek fails to disclose a plurality of plow beams moveably attached to the center frame and to each of the wing members, and a plurality of plowshares removeably attached to at least one of the plurality of plow beams. Moser teaches plow beams, which can be seen as the mounting bars (75, 76), and a plurality of plowshares removeably attached to at least one of the plurality of plow beams can be viewed as the coulters seen in Fig. 1 (Col 4, lines 44-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implement of Meek to include a plurality of plow beams moveably attached to the center frame and to each of the wing members, and a plurality of plowshares removeably attached to at least one of the plurality of plow beams, as taught by Moser, since Moser states in column 6, lines 44-55 that the coulters are used as applicator tools and to form furrows.

Regarding claim 15, Moser fails to disclose the coulters configured to be vertically and angularly adjustable, merely mentioning that they are conventional coulters. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the coulters of Moser to be adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Regarding claim 16, Meek fails to disclose the front edge, rear edge, and two side edges of the center frame member defining a planar center frame



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member opening, and wherein the front edge, rear edge, and side edges of each of the wing members define a planar wing member opening. Fig. 7 of Moser illustrates the planar center frame member opening and a planar wing member opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implement of Meek to include a planar center frame member opening and planar wing member opening as taught by Moser, since the space in Moser comes from having two parallel wing members and two parallel center members, thereby simply doubling the single beams in Meek and creating a wider frame structure with greater strength and rigidity, and it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 22, Meek fails to disclose at least one seeder bin, and a plurality of feeder tubes connected to the bins, wherein the tubes are configured to be vertically and angularly adjustable. Moser teaches a bin, seen as tank (29) for storing liquid fertilizer (C6I 6, lines 44-47), and a plurality of feeder tubes connected to the bin, seen as delivery tubes and hoses (Col 6, lines 47-55), though Moser fails to disclose a seeder bin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implement of Meek to include a bin as taught by Moser for seeds, and a plurality of feeder tubes, since Meek's implement is used for agricultural purposes, and Moser discloses a similar agricultural implement for liquid fertilizer application,

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which could simply be replaced with seeds for seed application, since it is known to use such agricultural implements to deposit seeds.

**8. Claims 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser (US 6,675,907) in view of Boetto et al (US 4,030,551).**

Regarding claim 38, Moser discloses an agricultural implement comprising:

- a substantially rectangular center frame, seen as center frame (36), having a front edge, rear edge, and two side edges,
- at least one substantially rectangular wing member, seen as inner wing section (37), having a front edge, rear edge, and two side edges,
- a plurality of center frame member hinge plates, seen as mounting plates ((87, 87) in Fig. 7, mounted on the first side edges of the center frame member, Fig. 7 illustrating the limitation of at least one of the hinge plates proximate to the front edge of the center frame member, and at least one of the hinge plates proximate the rear edge of the center frame member,
- a plurality of wing member hinge plates, seen as plates (94, 94) in Fig. 7, mounted on one of the side edges of each wing member, wherein at least one plate is proximate the front edge of each wing member and at least one plate is proximate the rear edge of the wing member (as shown in Fig. 7), and wherein the mounting

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plates (87, 87) configured to be pivotally connected to the plate (94, 94), and wherein once connected, the wing member is capable of being rotated between a first, parallel, working position and a second, folded, storage position as Figs. 1 and 2 illustrate, and

- at least one hitch connector shown in Fig. 1,
- at least one gauge wheel assembly disclosed in column 7, lines 18-20 in describing depth gauge wheel assemblies (42) and (43).

Meek fails to disclose at least one of the assemblies movably attached to the center frame member. Boetto teaches a folding agricultural implement utilizing gauge wheel assemblies (200, 200) movably attached to the center frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implement of Meek to include at least one gauge wheel assembly movably attached to the center frame member as taught by Boetto, since Boetto states in column 9, lines 20-40 that the wheels moveably attached to the center frame serve as conventional assist wheels.

Regarding claim 39, a plurality of plow beams moveably attached to the center frame and to each of the wing members can be seen as the mounting bars (75, 76).

Regarding claim 40, a plurality of plowshares removeably attached to at least one of the plurality of plow beams can be viewed as the coulter seen in Fig. 1 (Col 4, lines 44-60).

Regarding claim 41, Moser fails to disclose the coulters configured to be vertically and angularly adjustable, merely mentioning that they are conventional

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coulters. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the coulters of Moser to be adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Regarding claim 42, Fig. 7 of Moser illustrates the planar center frame member opening and a planar wing member opening.

### ***Allowable Subject Matter***

9. Claims 6, 7, and 17-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 33-37 and 43-47 are allowed.

### ***Response to Arguments***

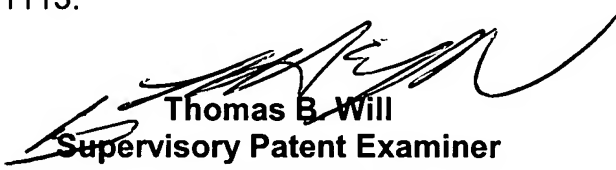
11. The applicant's 1/14/05 Response incorporated the subject matter that the Examiner indicated was allowable in the 10/14/04 Office Action. Upon further search and consideration, the Examiner is withdrawing some of that previously indicated allowable subject matter in light of new art and reconsideration of the art of record. For this reason, some of the claims are still allowable whereas others are now being rejected. Accordingly, this Office Action is made non-final.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

AKP  
3/25/05